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13 JUL 2006

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In re Application of: :
ADORINI, Lucian, et al. : DECISION ON PETITION UNDER
U.S. App. No.: 10/554,038 : 37 CFR 1.182
Filing Date: October 19, 2005 :
Attorney Docket No.: 59756DIV1(49949) :
For: GEMINI VITAMIN D3 COMPOUNDS :
AND METHODS OF USE THEREOF :

This decision is issued in response to applicants' "Petition To Treat Application As Filed Under 35 U.S.C. 111(a) Pursuant To 37 CFR 1.182" filed April 25, 2006. Deposit Account No. 04-1105 will be charged the required petition fee.

BACKGROUND

On April 30, 2004, applicants filed international application PCT/US04/13703. The application claimed a priority date of April 30, 2003 and designated the United States. The deadline for submission of the basic national fee was thirty months from the priority date, i.e., October 30, 2005.

On October 19, 2005, applicants filed a Transmittal Letter requesting entry into the national stage in the United States for PCT/US04/13703. This submission, which included, among other materials, payment of the basic national fee, an Application Data Sheet (ADS), and a preliminary amendment, was assigned U.S. application number 10/553,854 and entered into the USPTO system as the national stage of PCT/US04/13703 filed under 35 U.S.C. 371. The attorney docket number was 59756DIV2(49949) (hereinafter "DIV2").

Also on October 19, 2005, applicants filed a second Transmittal Letter requesting entry into the national stage in the United States for PCT/US04/13703. This submission, which included, among other materials, payment of the basic national fee, an ADS, and a preliminary amendment, was assigned U.S. application number 10/554,038. The attorney docket number was 59756DIV1(49949) (hereinafter "DIV1").

Because an international application may have only one U.S. national stage under 35 U.S.C. 371, applicants were contacted by the USPTO and informed that a petition under 37 CFR 1.182 was required if applicants wanted one of the sets of papers filed on October 19, 2005 to be treated as a separate application filed under 35 U.S.C. 111(a).

On April 25 2006, applicants filed the "Petition To Treat Application As Filed Under 35 U.S.C. 111(a) Pursuant To 37 CFR 1.182" considered herein. The petition requests that the materials assigned U.S. application number 10/554,038 (the DIV1 docket number) be treated as a continuation of international application PCT/US04/13703 filed under 35 U.S.C. 111(a), with a filing date of October 19, 2003. The petition also requests that the materials assigned U.S. application number 10/553,854 (the DIV2 docket number) be treated as the U.S. national stage of PCT/US04/13703 filed under 35 U.S.C. 371.

DISCUSSION

As is evident from the above recited facts, two sets of papers to enter the national stage under 35 U.S.C. 371 have been submitted for international application number PCT/US04/13703 (U.S. application numbers 10/553,854 and 10/554,038). The end result for an international application designating the United States of America is a single U.S. national stage application. Therefore, the submission of two sets of national stage papers in the U.S. was improper.

Pursuant to applicants' request in the present petition, the materials assigned U.S. application number 10/554,038 (the DIV1 docket number) will be treated as a filing under 35 U.S.C. 111(a), with a filing date of October 19, 2005. The present petition includes a supplemental ADS that contains the continuity reference to the international application required under 37 CFR 1.78. Pursuant to 37 CFR 1.8(b), the continuity reference is considered timely under 37 CFR 1.78(a)(2)(ii); the application can therefore properly be treated as a continuation of the international application without the need for a petition under 37 CFR 1.78(a)(3).

As also requested in the present petition, the materials assigned U.S. application number 10/553,854 (the DIV2 docket number) will be treated as the U.S. national stage of PCT/US04/13703 filed under 35 U.S.C. 371.

CONCLUSION

Applicants' petition under 37 CFR 1.182 is **GRANTED** to the extent that the materials assigned U.S. application number 10/554,038 (the DIV1 docket number) will be treated as a continuation of PCT/US04/13703 filed under 35 U.S.C. 111(a) filed October 19, 2005.

Application number 10/553,854 will continue to be processed as the national stage of PCT/US04/13703 filed under 35 U.S.C. 371.

Application number 10/554,038 is being referred to the Office Of Initial Patent Examination for processing as an application filed under 35 U.S.C. 111(a).



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